

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 3:06-cv-00544-WHA
)	
PHENIX CITY, ALABAMA, <u>et al.</u>)	
)	
)	
Defendants.)	
_____)	

**PLAINTIFF'S MOTION IN LIMINE NO. 1 TO EXCLUDE
EVIDENCE RELATING TO THE TERMINATION OF DENNIS DUTY**

Plaintiff hereby moves this Court for an order barring defendants from adducing any evidence pertaining to the facts or underlying events connected with a lawsuit brought against Phenix City by former fire fighter Dennis Duty in 2005 as a result of Duty's termination from the Phenix City Fire Department, including any alleged motivation by the Plaintiff to initiate the present matter as a result of Mr. Duty's termination.

Under Rule 401 of the Federal Rules of Evidence, evidence is relevant if it "has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Mr. Duty's termination and past lawsuit against Phenix City is immaterial and wholly irrelevant to the present matter because it is unrelated to the Plaintiff's April 2006 termination for contacting Mayor Hardin — *while off duty* — to discuss the probation proposal which would have extended the probationary period of new hires. It is

undisputed that but for the Plaintiff's phone call to Mayor Hardin, he would not have been terminated. Additionally, Defendants have proffered no evidence that would in any way demonstrate that Plaintiff initiated this lawsuit for any reason other than the violation of his constitutional rights by the Defendants.

Moreover, under Rule 403, evidence should be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Fed. R. Evid. 403. In the present matter, any proffered evidence related to Mr. Duty's lawsuit against Phenix City in 2005 or any alleged motivation by Plaintiff for filing this lawsuit as a result of that case could create undue prejudice and potentially inflame the passions of the trier of fact.

Finally, introducing Mr. Duty's termination and lawsuit in to this case would necessitate a "trial within a trial" to evaluate Mr. Duty's history with the Fire Department, the alleged reasons for Duty's termination, the basis and rationale for his lawsuit and other related matters. Clearly, such an approach would unduly lengthen the trial, confuse the jury, and obscure the facts that are relevant to the claims Mr. Davis has raised in the instant case.

Given this potential for prejudice, and the immateriality of such evidence to the issue of liability, Plaintiff respectfully requests that Defendants be precluded from proffering any evidence regarding a lawsuit brought by former Phenix City fire fighter Dennis Duty against Phenix City in 2005. Plaintiff also respectfully requests that Defendants be precluded from proffering any argument that Plaintiff was motivated to initiate this action as a result of Mr. Duty's termination from the Phenix City Fire Department.

Respectfully submitted,

s/ Douglas L. Steele
Thomas A. Woodley
Douglas L. Steele
Bryan G. Polisuk
WOODLEY & MCGILLIVARY
1125 15th Street, N.W.
Suite 400
Washington, D.C. 20005
Tel: (202) 833-8855
Fax: (202) 452-1090

J. Michael Cooper, Esq.
FITZPATRICK, COOPER & CLARK LLP
Farley Building, Suite 600
1929 Third Avenue North
Birmingham, Alabama 35203
Telephone (205) 320-2255
Fax: (205) 320-7444

Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 3:06-cv-00544-VPM
)	
PHENIX CITY, ALABAMA, <u>et al.</u>)	Judge W. Harold Albritton
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that one true and accurate copy of Plaintiff's Motion in
Limine was electronically filed on the following counsel for defendants on this 6th
day of January, 2007:

Joshua Robert McKoon
McKoon, Thomas, & McKoon
925 Broad Street
P.O. Box 3220
Phenix City, AL 36868

/s/ Douglas L. Steele
Attorney for Plaintiff